FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against WILLIAM KYLE SUTOR, III, a Minnesota Attorney, Registration No. 0390734.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of the Chair of the Lawyers Professional Responsibility Board, the Director of the Office of Lawyers Professional Responsibility (Director) files this petition pursuant to Rules 10(c) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on May 7, 2010. Respondent currently practices law in St. Louis Park, Minnesota.

As more particularly alleged below, on February 3, 2020, respondent pleaded guilty to a felony-conspiracy to commit healthcare fraud, in violation of 18 U.S.C. § 1349, a necessary element of which is conspiracy to commit fraud within the meaning of Rule 10(c), RLPR.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On June 28, 2018, respondent was admonished for soliciting employment from an individual known to be in need of legal services without ensuring the materials were clearly and conspicuously marked "Advertising Material" in violation of Rule 7.3(c), Minnesota Rules of Professional Conduct (MRPC).

B. On April 19, 2017, respondent was admonished for knowingly revealing confidential client information in violation of Rule 1.6(a), MRPC.

FIRST COUNT

1. On February 3, 2020, respondent pleaded guilty to a felony- conspiracy to commit healthcare fraud in violation of 18 U.S.C. § 1349. Respondent's criminal conduct implicated the practice of law and is summarized within the plea agreement and sentencing stipulation. *See* attached Exhibit 1.

2. The sentencing hearing is currently scheduled for November 4, 2020. Conviction of conspiracy to commit healthcare fraud under 18 U.S.C. § 1349 is a felony offense punishable with a term of imprisonment up to 10 years. *See* paragraph 5 of Exhibit 1.

3. Respondent's conduct in committing felony conspiracy to commit healthcare fraud violated Rule 8.4(b) and (c), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Susan M. Humiston

Humiston, Susan
Aug 26 2020 10:11 AM

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Hanson, Cassie
Aug 26 2020 9:17 AM

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Pursuant to Rules 10(c) and 12(a), RLPR, this petition for disciplinary action is hereby approved.

Dated: 9-9-20, 2020. Robin Wolpert

ROBIN M. WOLPERT
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-343 (NEB)

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM KYLE SUTOR III, Defendant.	)	PLEA AGREEMENT AND SENTENCING STIPULATIONS

The United States of America and William Kyle Sutor III (hereinafter referred to as the "defendant") agree to resolve the above-captioned case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Count 1 of the Information, charging him with conspiracy to commit health care fraud, in violation of 18 U.S.C. § 1349.

2. **Factual Basis**. From in or about 2015 and continuing thereafter through in or about 2016, in the State and District of Minnesota and elsewhere, the defendant willfully and knowingly conspired with other persons to execute a scheme and artifice to defraud providers of automobile insurance policies, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts,

money and property owned by and under the custody and control of providers of automobile insurance policies, in connection with the delivery of and payment for health care benefits, items, and services.

At relevant times, the defendant was an attorney residing in Minnesota and licensed by the Minnesota Supreme Court. The defendant was involved in a legal practice that focused primarily on pursuing personal injury claims on behalf of individuals who had been in car accidents. In the course of representing three separate individuals, the defendant began working with two chiropractors (the "Chiropractors") and patient recruiters, referred to as "runners." The arrangement was that the Chiropractors would pay the runner a fee, typically between $1,000 and $1,500, for every individual that the runner brought to the Chiropractors' clinic to become a patient. In addition, the defendant would pay the runner a fee, typically $300, for every individual that the runner brought to the defendant to become a client of the defendant. Thus, the runner would receive payment from both the Chiropractors and the defendant for every individual who became a patient of the Chiropractors and a client of the defendant.

The three insurance policies that were the target of the scheme were subject to Minnesota's No-Fault Automobile Insurance Act, which mandates that the policies provide minimum coverage of $20,000.00 in medical expense benefits, including expenses for chiropractic services, without regard to which party was at fault for the car accident. These no-fault insurance policies are health-care benefit programs under 18 U.S.C. § 24(b). In addition, under certain circumstances, the act permits an individual involved in a car

accident to make a claim for pain and suffering—referred to as a bodily injury or "BI" claim—against the insurance policy for the party that was at fault in the car accident. One such circumstance was when the individual incurred more than $4,000 in out-of-pocket medical expenses as a result of the car accident. Under the arrangement that the defendant entered into with Chiropractors and runners, the goal was to get the patients to incur at least $4,000 in chiropractor expenses so that the defendant could pursue the "no-fault" portion of the claim—that is, the claim for full payment of the chiropractic expenses—as well as the "at-fault" or BI portion of the claim for pain and suffering.

The payments by the defendant and the Chiropractors to the runners are a material fact to car insurance companies because they raise concerns about whether patients are submitting to chiropractic treatments and pursuing bodily injury claims because they need the treatments or because they are being paid to treat. The defendant, the Chiropractors, and the runners took steps to conceal their arrangement from the car insurance companies. For example, the Chiropractors often paid the runners in cash rather than check or in checks that were written out to business entities. Similarly, the defendant often paid the runners in cash or in checks written out to business entities that bore names designed to give the false impression that the payments were for legitimate services such as interpretation, investigation, or legal services. In reality, as the defendant knew, the payments were not for those legitimate purposes but instead were simply in exchange for the client referral. In a further effort to conceal the arrangement between himself and the runners, the

defendant began in April 2016 taking the additional step of paying half of the fee to the runner in cash and half in a check written out to a business entity.

The defendant pursued claims against insurance companies on behalf of three individuals whom he knew had become his clients (and the Chiropractors' patients) as a result of payments to runners. For example, in June 2015, the defendant paid $300 to a runner for the referral of an undercover agent posing as a prospective client. The defendant believed and had reason to believe that the involved Chiropractor had paid that runner for having referred that same undercover agent to become a patient of that Chiropractor. In addition, the defendant believed that the Chiropractor billed the insurance company for services that had not actually been provided to the undercover patient. Despite his belief that the Chiropractor had billed for services not actually provided, the defendant submitted a letter to the insurance company on April 19, 2016, falsely representing that the undercover agent had received all of the treatment billed by the chiropractor and demanding $24,000 to settle the BI claim.

3. **Waiver of Indictment.** The defendant agrees to waive indictment by a grand jury on this charge and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Pretrial Motions.** The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the

defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Statutory Penalties**. The defendant understands that the maximum statutory penalties for conspiracy to commit health care fraud, as charged in Count 1 of the Information, are as follows:

a. a term of imprisonment of up to 10 years;

b. a fine of up to $250,000 or twice the gross gain or loss;

c. a term of supervised release of up to three years;

d. a special assessment of $100.00, which is payable to the Clerk of Court prior to sentencing;

e. payment of mandatory restitution in an amount to be determined by the Court; and

f. assessment to the defendant of the costs of prosecution (as defined in 28 U.S.C. § 1918(b) and 1920).

6. **Revocation of Supervised Release**. The defendant understands that if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations**. The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, *et seq*. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

a. Use of Certain Information. Pursuant to U.S.S.G. § 1B1.8(a), the United States agrees that information provided by the defendant pursuant to his agreement to cooperate with law enforcement will not be used against the defendant in calculating his Guidelines range, except (1) as provided in the proffer letter dated July 11, 2019 or (2) pursuant to the provisions in U.S.S.G. § 1B1.8(b).

b. Base Offense Level. The parties agree that the base offense level is **6** pursuant to U.S.S.G. § 2B1.1(a)(1).

c. Specific Offense Characteristics. The parties agree that the offense level should be increased by **6 levels** because the intended loss amount exceeded $40,000 but was less than $95,000. U.S.S.G. § 2B1.1(b)(1)(D). The parties agree that no other specific offense characteristics apply.

d. Chapter Three Adjustments. The parties agree that the base offense level should be increased by **2 levels** because the defendant abused a position of trust or used a special skill in a manner that significantly facilitated the commission or concealment of the offense. U.S.S.G. § 3B1.3. Other than as provided for below concerning Acceptance of Responsibility, the parties agree that no other Chapter 3 adjustments apply.

e. Acceptance of Responsibility. The United States agrees to recommend that the defendant receive a **2-level** reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea and sentencing hearings, (ii) the defendant provides complete and truthful information to the Probation Office in the pre-sentence investigation, and (iii) the defendant commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1.

f. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is **I**. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. The defendant's actual criminal history and related status will be determined by the

Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.

g. Imprisonment Range. If the adjusted offense level is **12**, and the criminal history category is **I**, the Guidelines imprisonment range is **10 to 16 months**. (U.S.S.G. Ch. 5, Pt. A).

h. Fine Range. If the adjusted offense level is **12**, the fine range is **$5,500 to $55,000**. (U.S.S.G. § 5E1.2(c)(3)).

i. Supervised Release. The Guidelines advise a term of supervised release of **at least one but not more than three years**. (U.S.S.G. § 5D1.2).

j. Sentencing Recommendation and Departures. The parties reserve the right to make motions for departures from the applicable Sentencing Guidelines range and to oppose any such motions made by the opposing party. The parties reserve the right to argue for a sentence outside the applicable Sentencing Guidelines range.

8. **Discretion of the Court**. The foregoing stipulations are binding on the parties but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and that their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculation or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. **Cooperation**. The defendant has agreed to cooperate with law enforcement authorities in the prosecution of defendant's co-defendants, and in the investigation and

prosecution of other suspects. This cooperation includes, but is not limited to, being interviewed by law enforcement agents, submitting to a polygraph examination if the government deems it appropriate, and testifying truthfully at any trial or other proceeding involving defendant's co-defendants and other suspects. If the defendant cooperates fully and truthfully as required by this agreement and thereby renders substantial assistance to the government, the government will, at the time of sentencing, move for a downward departure under U.S.S.G. § 5K1.1. The government also agrees to make the full extent of the defendant's cooperation known to the Court.

The defendant understands that the government, not the Court, will decide whether the defendant has rendered substantial assistance. The government will exercise its discretion in good faith. The defendant also understands that there is no guarantee the Court will grant any such motion for a downward departure and that the amount of any downward departure is within the Court's discretion. In the event the government does not make or the Court does not grant such a motion, the defendant may not withdraw this plea based on that ground.

Finally, the defendant understands that the government is not required to accept any tendered cooperation on the defendant's part. If the government, in its sole discretion, chooses not to accept tendered cooperation, the defendant will not receive a sentence reduction for such tendered cooperation and will not be allowed to withdraw from the plea agreement based upon that ground.

10. **Special Assessment**. The Guidelines require payment of a special assessment in the amount of $100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the $100 special assessment prior to sentencing.

11. **Restitution**. The defendant understands and agrees that the Mandatory Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order the defendant to make restitution to the victims of his crime. The parties agree that the amount of restitution is $14,612.06.

The defendant represents that the defendant will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which the defendant has any right, title, or interest. The defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court. The defendant agrees to complete a financial statement fully and truthfully before the date of sentencing.

12. **Forfeiture**. The defendant understands and agrees that the United States reserves its right to seek a personal money judgment forfeiture against the defendant in these actions, and to proceed against any of the defendant's property, whether directly forfeitable or substitute property, in a civil, criminal, or administrative forfeiture action if said property is subject to forfeiture under federal law. The defendant agrees not to contest any such forfeiture proceedings, so long as the government meets the required legal standards.

13. **Waivers of Appeal and Collateral Attack**. The defendant understands that 18 U.S.C. § 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal the defendant's sentence, unless the sentence exceeds 16 months of imprisonment. In addition, the defendant expressly waives the right to petition under 28 U.S.C. § 2255. The United States also waives its right to seek appellate review of any sentence imposed by the Count on any ground set forth in 18 U.S.C. § 3742 unless the sentence is less than 10 months of imprisonment. However, the waivers by the defendant noted above shall not apply to a direct appeal or post-conviction collateral attack based on a claim of ineffective assistance of counsel. The defendant has discussed these rights with his attorney. The defendant understands the rights being waived, and he waives these rights knowingly, intelligently, and voluntarily.

14. **Freedom of Information Act Waiver**. The defendant waives all rights to obtain, directly or through others, information about the investigation and prosecution of this case under the Freedom of Information Act and the Privacy Act of 1974, 5 U.S.C. §§ 552, 552A.

15. **Complete Agreement**. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises,

representations, or understandings.

Date: February 3, 2020

ERICA H. MACDONALD
United States Attorney

By: David S. MacLaughlin
DAVID MACLAUGHLIN
Assistant U.S. Attorney

Date: February 3, 2020

WILLIAM KYLE SUTOR III
Defendant

Date: February 3, 2020

JOHN MARTI, Esq.
IAN BLODGER
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